

ASSEMBLY BILL

No. 1860

Introduced by Assembly Member Migden

January 31, 2002

An act to amend Section 13823.11 of the Penal Code, relating to sexual assault victims.

LEGISLATIVE COUNSEL'S DIGEST

AB 1860, as introduced, Migden. Sexual assault victim: pregnancy counseling: emergency contraception.

Existing law sets forth minimum standards for the examination and treatment of victims of sexual assault, including the taking of a baseline gonorrhea culture, a syphilis serology, and specimens for a pregnancy test, if indicated by the history of contact.

This bill would provide, in addition, that where indicated by the history of contact, a female victim of sexual assault shall receive counseling regarding the risk of pregnancy and the options for postcoital contraception, and emergency contraception shall be dispensed upon the request of the victim. Because these changes to the law would increase the duties of local health care professionals, this bill would impose a state-mandated local program upon local government.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13823.11 of the Penal Code is amended
2 to read:
3 13823.11. The minimum standards for the examination and
4 treatment of victims of sexual assault or attempted sexual assault,
5 including child molestation and the collection and preservation of
6 evidence therefrom include all of the following:
7 (a) Law enforcement authorities shall be notified.
8 (b) In conducting the physical examination, the outline
9 indicated in the form adopted pursuant to subdivision (c) of
10 Section 13823.5 shall be followed.
11 (c) Consent for a physical examination, treatment, and
12 collection of evidence shall be obtained.
13 (1) Consent to an examination for evidence of sexual assault
14 shall be obtained prior to the examination of a victim of sexual
15 assault and shall include separate written documentation of
16 consent to each of the following:
17 (A) Examination for the presence of injuries sustained as a
18 result of the assault.
19 (B) Examination for evidence of sexual assault and collection
20 of physical evidence.
21 (C) Photographs of injuries.
22 (2) Consent to treatment shall be obtained in accordance with
23 usual hospital policy.
24 (3) A victim of sexual assault shall be informed that he or she
25 may refuse to consent to an examination for evidence of sexual
26 assault, including the collection of physical evidence, but that such
27 a refusal is not a ground for denial of treatment of injuries and for
28 possible pregnancy and ~~veneral~~ venereal disease, if the person
29 wishes to obtain treatment and consents thereto.
30 (4) Pursuant to Chapter 3 (commencing with Section 6920) of
31 Part 4 of Division 11 of the Family Code, a minor may consent to



1 hospital, medical, and surgical care related to a sexual assault
2 without the consent of a parent or guardian.

3 (5) In cases of known or suspected child abuse, the consent of
4 the parents or legal guardian is not required. In the case of
5 suspected child abuse and nonconsenting parents, the consent of
6 the local agency providing child protective services or the local
7 law enforcement agency shall be obtained. Local procedures
8 regarding obtaining consent for the examination and treatment of,
9 and the collection of evidence from, children from child protective
10 authorities shall be followed.

11 (d) A history of sexual assault shall be taken.

12 The history obtained in conjunction with the examination for
13 evidence of sexual assault shall follow the outline of the form
14 established pursuant to subdivision (c) of Section 13823.5 and
15 shall include all of the following:

16 (1) A history of the circumstances of the assault.

17 (2) For a child, any previous history of child sexual abuse and
18 an explanation of injuries, if different from that given by parent or
19 person accompanying the child.

20 (3) Physical injuries reported.

21 (4) Sexual acts reported, whether or not ejaculation is
22 suspected, and whether or not a condom or lubricant was used.

23 (5) Record of relevant medical history.

24 (e) Each adult and minor victim of sexual assault who consents
25 to a medical examination for collection of evidentiary material
26 shall have a physical examination which includes, but is not
27 limited to, all of the following:

28 (1) Inspection of the clothing, body, and external genitalia for
29 injuries and foreign materials.

30 (2) Examination of the mouth, vagina, cervix, penis, anus, and
31 rectum, as indicated.

32 (3) Documentation of injuries and evidence collected.

33 Prepubital children shall not have internal vaginal or anal
34 examinations unless absolutely necessary (this does not preclude
35 careful collection of evidence using a swab).

36 (f) The collection of physical evidence shall conform to the
37 following procedures:

38 (1) Each victim of sexual assault who consents to an
39 examination for collection of evidence shall have the following

1 items of evidence collected, except where he or she specifically
2 objects:

3 (A) Clothing worn during assault.

4 (B) Foreign materials revealed by an examination of the
5 clothing, body, external genitalia, and pubic hair combings.

6 (C) Swabs and slides from the mouth, vagina, rectum, and
7 penis, as indicated, to determine the presence or absence of sperm
8 and sperm motility, and for genetic marker typing.

9 (2) Each victim of sexual assault who consents to an
10 examination for the collection of evidence shall have reference
11 specimens taken, except when he or she specifically objects
12 thereto. A reference specimen is a standard from which to obtain
13 baseline information (for example: pubic and head hair, blood, and
14 saliva for genetic marker typing). These specimens shall be taken
15 in accordance with the standards of the local criminalistics
16 laboratory.

17 (3) A baseline gonorrhea culture, and syphilis serology, shall
18 be taken, if indicated by the history of contact. Specimens for a
19 pregnancy test shall be taken, if indicated by the history of contact.

20 (4) (A) *Where indicated by the history of contact, a female*
21 *victim of sexual assault shall receive counseling regarding the risk*
22 *of pregnancy and the options for postcoital contraception.*

23 (B) *Emergency contraception shall be dispensed upon the*
24 *request of the victim.*

25 (g) Preservation and disposition of physical evidence shall
26 conform to the following procedures:

27 (1) All swabs and slides shall be air-dried prior to packaging.

28 (2) All items of evidence including laboratory specimens shall
29 be clearly labeled as to the identity of the source and the identity
30 of the person collecting them.

31 (3) The evidence shall have a form attached which documents
32 its chain of custody and shall be properly sealed.

33 (4) The evidence shall be turned over to the proper law
34 enforcement agency.

35 SEC. 2. Notwithstanding Section 17610 of the Government
36 Code, if the Commission on State Mandates determines that this
37 act contains costs mandated by the state, reimbursement to local
38 agencies and school districts for those costs shall be made pursuant
39 to Part 7 (commencing with Section 17500) of Division 4 of Title
40 2 of the Government Code. If the statewide cost of the claim for

- 1 reimbursement does not exceed one million dollars (\$1,000,000),
- 2 reimbursement shall be made from the State Mandates Claims
- 3 Fund.

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